Nebraska Department of REVENUE

# SPECIAL CAPITAL GAINS/EXTRAORDINARY DIVIDEND ELECTION AND COMPUTATION

- Attach a copy of Federal Schedule D or other appropriate federal documentation
- Attach this page to Form 1040N or 1041N

**FORM 4797N**

**2008**

| Your Name as Shown on Form 1040N | Social Security Number |
|---|---|
| | |

## READ THIS BEFORE YOU BEGIN:

Complete PART I if an election has not been previously made and you are qualified to make the special capital gains or extraordinary dividend election for the qualified stock. Those qualified to make the election primarily are employees, but may include a surviving spouse or oldest issue (e.g., child, grandchild). **If you are not the employee, FIRST COMPLETE PART III on the reverse side of this form to determine if you are qualified to make the initial election.** PART II computes the income exclusion and is completed only after a proper election has been made. If filing to claim **both** a capital gains exclusion **and** to exclude an extraordinary dividend paid, complete two separate **PART II INCOME EXCLUSION** calculations. Combine the allowable exclusion amounts from line 14 of each calculation and enter on appropriate line of Form 1040N or Form 1041N. Attach a worksheet showing this.

## PART I ELECTION

- **Complete this part to make the Special Capital Gains/Extraordinary Dividend Election**

| Name of Employee Who Originally Acquired the Stock | Employee's Social Security Number |
|---|---|
| | |

**1** Has employee (or another qualified individual on behalf of the employee) made a previous special capital gains or extraordinary dividend election?

☐ YES ☐ NO

If Yes, do not complete the remainder of Part I. Instead, attach a copy of the previous election (Form 4797N), and enter the tax year election was made _____.

If No, complete the remainder of Part I to make the election.

**2** Complete the following statement by checking the applicable box:

I am the: ☐ Employee ☐ Surviving Spouse ☐ Oldest Issue

If you checked Employee, you qualify to make the election.

If you checked Surviving Spouse or Oldest Issue, you must complete Part III to see if you qualify to make the election (see instructions).

**3** Was the stock acquired by the employee because of employment by the issuing corporation or while employed by the issuing corporation?

☐ YES ☐ NO

**4** Name of Corporation Issuing Stock for Which This Election is Made:

**5** Description of the Stock:

**6** Has the corporation which issued the stock conducted business in Nebraska for three years immediately preceding the time of the first sale, exchange, or extraordinary dividend declaration?

☐ YES ☐ NO

**7** Was the corporation a publicly traded corporation?

☐ YES ☐ NO

If No, answer questions 8 and 9.

**8** If you answered No to question 7, how many shareholders did the corporation have at the time of the first sale or exchange of stock or declaration of extraordinary dividend?

**9** If you answered No to question 7, did a shareholder or group of related shareholders hold more than 90% of the stock at the time of the first sale or exchange of stock or declaration of extraordinary dividend?

☐ YES ☐ NO

I hereby elect to receive the special capital gains/extraordinary dividend treatment provided under Neb. Rev. Stat. § 77-2715.09, and declare under penalties of perjury that to the best of my knowledge and belief, the capital stock described above qualifies for the special capital gains/extraordinary dividend election.

**sign here** ▶ _____ _____

Signature of Employee, Surviving Spouse, or Oldest Issue Making this Election — Date

RESET PRINT SAVE

## PART I — INSTRUCTIONS

This irrevocable one-time election may be made by any full-year resident individual who acquired the capital stock of a qualified corporation either on account of employment by the corporation or while employed by the corporation. Partial-year residents may also make the election to claim the income exclusion if they sell the stock or receive the extraordinary dividend while living in Nebraska.

If the employee died without making the election, the surviving spouse or, if no surviving spouse, the oldest surviving issue (e.g., child, grandchild) may make the election if the election could have been made by the employee.

Part III sets out the criteria to be met for a proper election when the individual making the election is not the employee.

An individual making this special capital gains or extraordinary dividend election must complete Part I of Form 4797N, and attach it to his or her Nebraska Individual Income Tax Return, Form 1040N.

## PART II INCOME EXCLUSION

• **Complete this part to compute the Income Exclusion**

This part is to be completed if you are claiming an exclusion from income for Nebraska purposes because of the sale of qualified stock for which an election has previously been made or is being made in Part I of this form. **If filing to exclude an extraordinary dividend, enter on line 8 the fair market value of the stock on the date the dividend was declared. Skip line 9 and enter the amount of the extraordinary dividend on line 10.**

**If you are the spouse or issue of the employee, or a trust for the benefit of the spouse or issue, and received the qualified stock as a gift from the employee, FIRST COMPLETE PART III of this form to determine if the sale of stock or payment of dividend qualifies for the income exclusion. CAUTION: If you are not the employee, you must have received the stock as a gift from the employee in order for it to qualify.**

Name of Stock Owner at Time of Sale or Exchange or Declaration of Extraordinary Dividend

If not employee, was the stock a gift from employee?

☐ YES ☐ NO If No, STOP, you do not qualify for the election.

**1** Name of Corporation Issuing Stock

**2** Description of Stock

**3** Name of Employee Who Originally Acquired Stock

**4** Employed by the Qualified Corporation

from: _____ Month/Day/Year to: _____ Month/Day/Year

**5** Date Stock Acquired by Employee

from: _____ Month/Day/Year to: _____ Month/Day/Year

**6** Your Relationship to Employee

**7** The election to designate stock for the income exclusion was made by (see instructions):

_____ Name of Person Making the Election or Who Previously Made the Election

_____ Social Security Number

| | | | |
|---|---|---|---|
| **8** | Sale price of stock (attach Federal Schedule D and other appropriate federal documentation). If filing to exclude an extraordinary dividend, enter the fair market value of the stock on the date the dividend was declared; then enter the amount of the extraordinary dividend on line 10 | **8** | |
| **9** | Cost or other basis in stock | **9** | |
| **10** | Enter capital gain on sale(s) of qualifying stock during this year (line 8 minus line 9). **Note: If filing to exclude an extraordinary dividend, enter amount of dividend paid this year and then divide line 10 by line 8. If the result is greater than .20, also enter amount from line 10 on line 14. If the result is .20 or less, STOP. The dividend does not qualify for the exclusion** | **10** | |
| **11** | Capital gain exclusion not taken in prior year | **11** | |
| **12** | Total capital gain available for exclusion (line 10 plus line 11) | **12** | |
| **13** | Limitation on capital gains exclusion (see instructions) | **13** | |
| **14** | Allowable capital gains/extraordinary dividend exclusion (smaller of line 12 or line 13). If filing to exclude an extraordinary dividend, enter the amount from line 10, **provided** the result of line 10 divided by line 8 is greater than .20. Enter here and on line 54, Schedule I, Form 1040N or line 8, Form 1041N (Part-year residents do not include this amount on line 63, Schedule III, Form 1040N) | **14** | |
| **15** | Capital gains exclusion deferred to next year (line 12 minus line 14) | **15** | |

## INSTRUCTIONS

### DEFINITIONS

**CAPITAL STOCK** is common or preferred stock and may be either voting or nonvoting. Capital stock does not include stock rights, stock warrants, stock options, debt securities, or cash distributions from employee stock ownership plans.

**Stock received through the creation or purchase of a corporation by an investor who is not also an employee, or for services performed for a corporation by a non-employee does not qualify for this election. Stock that was inherited or transferred through a testamentary trust does not qualify for this election.**

**EXTRAORDINARY DIVIDEND** means any dividend exceeding 20 percent of the fair market value of the stock on which it is paid as of the date the dividend is declared.

**QUALIFIED CORPORATION** is any corporation which, at the time of the first sale or exchange or declaration of extraordinary dividend for which the election is made, has been in existence and actively doing business in Nebraska

for at least three years. At that time, the corporation must have at least five shareholders with at least two shareholders or groups of shareholders who are not related to each other and with no more than ninety percent of the stock being held by a single related group of shareholders.

**EMPLOYEE** is the individual who acquired the capital stock of a qualified corporation either (1) because of employment by the corporation, or (2) while employed by the corporation.

**Once the election has been made,** (1) subsequent sales and exchanges of the qualifying stock or payments of extraordinary dividends in any taxable year and (2) sales and exchanges or payments of extraordinary dividends relating to stock owned by a spouse or issue received as a gift, including a gift in trust, from the employee during his or her lifetime, qualify for the income exclusion. However, the gain on the sale of stock or extraordinary dividend received by other trusts, partnerships, or other entities cannot be excluded even though it is reported on the employee's return.

**MAXIMUM EXCLUSION.** The amount to be excluded cannot exceed the amount of the gain or dividend included in your adjusted gross income.

## PART II — INSTRUCTIONS

### SPECIAL INSTRUCTIONS

If a joint return is being filed and both spouses are reporting a special capital gains/extraordinary dividend exclusion, file a separate Form 4797N for each spouse and complete all appropriate lines through Part II, line 7. Complete lines 8 through 15 on only one of the Forms 4797N using the combined information for both spouses. On the other Form 4797N write, "Exclusion calculation on other form."

**LINE 1.** If the name of the corporation which issued the stock differs from the corporation appearing on line 4 of the Part I Election, attach an explanation as to how the corporations are related and why the gain or dividend being excluded qualifies for the income exclusion.

**LINE 2.** Enter the description of the capital stock. For example, "100 shares of seven percent preferred voting stock."

**LINE 5.** If stock acquisition date does not occur during employment dates, attach an explanation of how stock was acquired because of employment or while employed by the corporation.

**LINE 7.** If the election is being made on this return, enter the phrase "See Part I." If an election was previously made, attach a copy of the Form 4797N upon which the election was previously made either by you or the qualified person.

**LINE 8.** Enter the sales price of the stock as shown on your Federal Schedule D (or Form 1099-B). If a broker advised you that the gross proceeds (gross sales price) less commission and option premium were reported to the Internal Revenue Service, enter the net amount on line 8 and do not include the commission and option premium on line 9. If filing to exclude an extraordinary dividend, enter the fair market value of the stock on the date the dividend was declared.

**LINE 9.** In general, the cost or other basis is the cost of the stock as shown on your Federal Schedule D. If you do not use cash cost as a basis, attach an explanation of your basis.

When selling stock, adjust your basis by subtracting all the nontaxable distributions you receive before the sale. Also, adjust your basis for any stock splits.

Increase your basis by any expenses of sale such as a broker's fee, commission, and option premium before making an entry on line 9, unless you reported net sales price on line 8.

**LINE 10.** Enter the amount of the capital gain or extraordinary dividend on qualified stock transactions this year. Distributions which are considered ordinary income or which are reported on Forms W-2 and not included on your Federal Schedule D are **not** eligible for the exclusion. Losses on the sale of qualifying stock must be netted against gains to determine the amount of capital gain to report on line 10. If filing to exclude an extraordinary dividend, the dividend must exceed 20 percent of the fair market value of the stock on which it is paid as of the date the dividend is declared. A dividend which does not meet this requirement is not eligible for the income exclusion.

**LINE 11.** Enter the amount of the qualified gain on transactions in prior years that has been carried forward.

**LINE 13.** If line 13, Federal Form 1040, or line 4, Federal Form 1041, is a capital gain, add that amount to $3,000 ($1,500 if married, filing separately) and enter result on line 13 of this form. If line 13, Federal Form 1040, or line 4, Federal Form 1041, is a capital loss, enter $3,000 ($1,500 if married, filing separately) reduced by the amount of that loss. **Caution:** The amount on line 13 of this form cannot be less than zero or more than line 14, Form 1040N, computed without regard to the special capital gains exclusion (i.e., what line 14, Form 1040N would be if the capital gains exclusion is zero).

**LINE 15.** If line 12 is larger than line 14, subtract line 14 from line 12. This is the amount of qualified gain that may be carried over and excluded in future years. Otherwise, enter -0-.

**Attach a copy of your Federal Schedule D, or other appropriate federal documentation. If the gain results from an installment sale, you must attach a copy of Federal Form 6252.**

## PART III

**• If you are not the employee, complete this part to see if you qualify to make the Election and claim the Income Exclusion**

## INSTRUCTIONS

Start with Question #1. Follow the directions provided by the questions. Answer **only** the questions indicated by the directions. You will not have to answer all of the questions. If the Part III questions do not pertain to your particular situation, contact the Nebraska Department of Revenue for assistance in determining your qualifications for the special capital gains/extraordinary dividend election. If a trust, the beneficiary(ies) must answer the questions. **Note: Stock that was inherited or transferred through a testamentary trust does not qualify for this election.**

**1** Has the employee previously made a special capital gains/extraordinary dividend election for this stock?

☐ YES ☐ NO

If Yes, answer Question 2. If No, answer Question 4.

**2** Relationship to employee (check only one):

☐ Spouse ☐ Child or Other Issue, e.g., grandchild

If Spouse, answer Question 3.

**If Child or Other Issue, STOP HERE.** You qualify for the income exclusion. Complete Part II and include a copy of the Form 4797N which has previously been filed by employee.

**3** Were you married to the employee on the date of sale or exchange of stock or declaration of the extraordinary dividend?

☐ YES ☐ NO

**STOP HERE.** If Yes, you qualify for the income exclusion. Complete Part II and include a copy of the Form 4797N which has previously been filed by the employee.

If No, you do not qualify for the election. Do not answer the remaining questions and do not complete Part I or Part II.

**4** Is the employee still living?

☐ YES ☐ NO

**If Yes, STOP HERE.** You do not qualify for the election. Do not answer the remaining questions and do not complete Part I or Part II.

If No, answer Question 5.

**5** Relationship to employee (check only one):

☐ Spouse ☐ Child or Other Issue, e.g., grandchild

If Spouse, answer Question 6. If Child or Other Issue, answer Question 7.

**6** Were you married to the employee on the date of sale or exchange of stock or declaration of extraordinary dividend or on the date of the employee's death, whichever is earlier?

☐ YES ☐ NO

**STOP HERE.** If Yes, you may make the election by completing Part I; then complete Part II. If No, you do not qualify for the election. Do not answer the remaining questions and do not complete Part I or Part II.

**7** Did the employee's spouse make the special capital gains/extraordinary dividend election?

☐ YES ☐ NO

**If Yes, STOP HERE.** You qualify for the income exclusion. Complete Part II and include a copy of the Form 4797N which has previously been filed by the employee's spouse.

If No, answer Question 8.

**8** Is the employee's spouse still living?

☐ YES ☐ NO

**If Yes, STOP HERE.** You do not qualify for the election. Do not answer the remaining question and do not complete Part I or Part II.

If No, answer Question 9.

**9** Are you the **oldest s**urviving issue, e.g., child, grandchild?

☐ YES ☐ NO

**If Yes, STOP HERE.** You may make the election by completing Part I; then complete Part II.

If No, answer Question 10.

**10** Did the employee's **oldest** surviving issue previously make the special capital gains/extraordinary dividend election?

☐ YES ☐ NO

**STOP HERE.** If Yes, you qualify for the income exclusion. Complete Part II, and include a copy of Form 4797N which has previously been filed by the employee's oldest surviving issue.

If No, you do not qualify for the election. Do not complete Part I or Part II.